

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Theodore Wagner, # 286910,	)	C/A No.: 3:07-cv-2698-GRA-JRM
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	(Written Opinion)
South Carolina Department of	)	
Corrections,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court for a review of the magistrate's Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., filed on February 29, 2008. The plaintiff originally filed this action pursuant to 42 U.S.C. § 1983, on August 2, 2007, complaining that the defendant unconstitutionally deprived him access to the court.

On August 28, 2007, the defendant filed a motion to dismiss. The Court sent the plaintiff an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), on August 30, 2007, advising the plaintiff that failure to respond to the defendant's motion could result in the dismissal of his complaint. Rather than respond to the defendant's motion, the plaintiff filed motions for default and remand.

Plaintiff brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. See *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978).

This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th. Cir. 1983).

Objections must be filed within ten days of the date of service of the Report and Recommendation. This period excludes weekends and holidays. Fed. R. Civ. P. 6. If a plaintiff files his or her objections by mail, he or she is afforded an additional three days. *Id.* A prisoner files a document when he or she hands the document to the jail's mail room. *Houston v. Lack*, 487 U.S. 266 (1988).

The magistrate's Report and Recommendation was served on February 29, 2008. This gave the plaintiff until March 19, 2008, to mail/file timely objections or

to file for an extension of time. The plaintiff indicated on his certificate of service that he handed his objections to the prison's mail center on March 20, 2008. Therefore, the plaintiff's objections were not filed in a timely manner, and this Court need not address untimely objections.

After a thorough review of the record, the pleadings, and the magistrate's Report and Recommendation, this Court finds that the magistrate applied sound legal principles to the facts of this case. Therefore, this Court adopts the magistrate's Report and Recommendation in its entirety.

IT IS THEREFORE SO ORDERED THAT the defendant's motion to dismiss be DENIED as to its res judicata claims and GRANTED as to the plaintiff's state law conspiracy claims;

IT IS FURTHER ORDERED THAT the plaintiff's motions for default, partial summary judgment, and remand be DENIED;

IT IS FURTHER ORDERED THAT all of the plaintiff's federal claims be DISMISSED;

IT IS FURTHER ORDERED THAT any remaining state law claims be REMANDED to the state court.

IT IS SO ORDERED.



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G. ROSS ANDERSON, JR.  
UNITED STATES DISTRICT JUDGE

March 27, 2008  
Anderson, South Carolina

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Plaintiff has the right to appeal this Order within thirty (30) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**